In the High Court of Judicature at Madras

Dated: 13.03.2006

Coram:

The Honourable Mr. Justice K.MOHAN RAM

Writ Petition No.2264 of 2006
and W.P.M.P.No.2558 of 2006

C.Baskaran ..Petitioner

..vs..

The Deputy Commercial Tax Officer,
Tindivanam Tax Circle,
Tindivanam. ..Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Proceedings Pa.Sa.No.4722179/2005-2006 dated 09.01.2006 on the file of the respondent and quash the same.

For Petitioner : Mr.R.Suresh Kumar
For Respondent : Ms.Manohar Sundaram,
Govt.Advocate (Taxes)

ORDER

By consent of both parties, the writ petition itself is taken up for final disposal.

2. The case of the petitioner is as follows:-

The petitioner is a registered Works Contractor under the Tamil Nadu Highways Department and also registered under Tamil Nadu General Sales Tax bearing TNGST No.4722179 on 08.09.2005 as a dealer in "Works Contract". The petitioner filed a Nil report for the year 2004-2005 before the Sales Tax Department on 08.09.2005. The petitioner received a letter dated 04.01.2006 calling upon to submit Form A1 for the present month. The petitioner received the impugned letter dated 09.01.2006 stating that the petitioner's registration has been cancelled.

3. Challenging the cancellation of the petitioner's registration, the above writ petition has been filed.

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4. The main contention of the petitioner is that the respondent had failed to follow the basic principles of natural justice and the letter dated 04.01.2006 itself is perverse as the letter lacked even the basic ingredients to call for explanation or a minimum period to the petitioner to respond. The further grievance of the petitioner is that the order of cancellation not only cancels the registration but also records a perverse finding against the petitioner causing damage to the reputation of the petitioner, in the absence of any acceptable materials.

5. Mr.Manohar Sundaram, learned Government Advocate (Taxes), on instructions, submits that no notice was issued to the petitioner before passing the impugned order.

6. Sections 21(5) and 21(6) of the Tamil Nadu General Sales Tax reads as follows:

> "Section 21(5): The prescribed authority shall have power for good and sufficient reasons to cancel, modify or amend any certificate of registration granted by him.
>
> Section 21(6): No application for registration or for a copy or duplicate of the certificate and no renewal under this section shall be refused and no order under sub-section(5) shall be made, unless the dealer concerned has been given an opportunity of being heard".

7. A reading of the above two Provisions clearly shows that the prescribed authority in this case, viz., the respondent, though has power to cancel the registration certificate granted by him, that power can be exercised only if the respondent is satisfied that there are good and sufficient reasons to cancel the Certificate of Registration and that too, after giving him an opportunity of hearing to the dealer. When the above said statutory provisions categorically mandates the issuance of a notice and providing of a hearing to the dealer, it is the bounden duty of the respondent to follow the same. But in this case, the respondent has miserably failed to follow the above said provisions. The impugned order passed by the respondent is grossly in violation of not only the principles of natural justice but also the statutory provisions contained in Section 21(5) and 21(6) of the said Act. Therefore, the impugned order is liable to be set aside and, accordingly, it is set aside. But however, it

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is open to the respondent to take any further action if the circumstances warrant such further action and if the respondent decides to take further action, then the respondent should strictly follow the provisions contained in Sections 21(5) and 21(6) of the Tamil Nadu General Sales Tax Act.

8. The writ petition is allowed. No costs. Consequently, connected WPMP.is closed.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Deputy Commercial Tax Officer,
Tindivanam Tax Circle,
Tindivanam.

+ one cc to Mr. R. Suresh Kumar, Advocate sr no., 12415
+ one cc to the Spl. GP (T) sr no. 12404

SSV(CO)
NM(21.03.2006)

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